

REMARKS

The Office action of July 18, 2008, has been carefully considered.

Claims 5-7 and 9-12 have been rejected under 35 USC 102(b) as anticipated by Casey, while Claim 8 has been rejected under 35 USC 103(a) as obvious over Casey.

The Office action compares the cap structure of Casey with the structure of the oral mucous membrane protector according to the invention. Claims 5-10, directed specifically to the protector, have now been canceled from the application. Claims 11 and 12 remain in the application with Claim 12 having been amended to correct the preamble, such that the preamble of Claim 12 agrees with the preamble of Claim 11, from which Claim 12 depends. New Claims 13 through 16 have been added to the application, these claims depending directly or ultimately from Claim 11 and reciting subject matter from canceled Claims 7-10.

Claim 11 is directed to an orthodontic application in the mouth of a patient comprising a bracket system surrounding a molar tube with an arch end projecting from a distal end of the molar tube. In this application, the improvement comprises an oral mucous membrane protector comprising a protective element constructed and arranged to cover or envelope the end of the arch and fixing means fixed to the bracket system surrounding the molar tube behind flaps thereof at the height of the arch.

While Casey does show a cap with an elastic ring which constitutes a "fixing means," the cap has the purpose of housing a double twisted wire with the elastic ring serving as a guide for the wire, but not being fixed to the bracket system surrounding the molar tube behind flaps thereof at the height of the arch.

It is further noted that Claim 11 does not rely on any

statement of intended use or any other functional statements, as noted in the Office action, but rather relies on a specific structure comprising an orthodontic application and a protective element, and the relationship between that orthodontic application and the protective element.

Applicant further notes that while this Amendment is filed after a final rejection, Claim 11 has not been amended and Applicant requests that Claim 11 be examined after final rejection specifically on that basis. Further, Applicant does not believe that any of the other amendments to the claims create new issues for further consideration or search, but even if the Examiner determines that this is the case, Claim 11 raises no new issues and should be examined.

Withdrawal of the rejections of record is requested.

In view of the foregoing amendments and remarks, Applicant submits that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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